

22-1-1. Definitions.

In this chapter unless the context or subject matter otherwise requires:

"Fiduciary" includes a trustee under any trust, expressed, implied, resulting or constructive, executor, administrator, guardian, conservator, curator, receiver, trustee in bankruptcy, assignee for the benefit of creditors, partner, agent, officer of a corporation, public or private, public officer, and any other person acting in a fiduciary capacity for any person, trust or estate.

"Principal" includes any person to whom a fiduciary as such owes an obligation.

A thing is done "in good faith" when it is in fact done honestly, whether it is done negligently or not.

No Change Since 1953

22-1-2. Payments made to fiduciaries.

A person who in good faith pays or transfers to a fiduciary any money or other property which the fiduciary as such is authorized to receive is not responsible for the proper application thereof by the fiduciary; and no right or title acquired from the fiduciary in consideration of such payment or transfer is invalid in consequence of a misapplication by the fiduciary.

No Change Since 1953

22-1-4. Transfer of negotiable instruments by fiduciaries.

If any negotiable instrument payable or indorsed to a fiduciary as such is endorsed by the fiduciary, or if any negotiable instrument payable or endorsed to his principal is endorsed by a fiduciary empowered to endorse such instrument on behalf of his principal, the indorsee is not bound to inquire whether the fiduciary is committing a breach of his obligation as fiduciary in endorsing or delivering the instrument, and is not chargeable with notice that the fiduciary is committing a breach of his obligation as fiduciary, unless he takes the instrument with actual knowledge of such breach or with knowledge of such facts that his action in taking the instrument amounts to bad faith. If, however, such instrument is transferred by the fiduciary in payment of, or as security for, a personal debt of the fiduciary to the actual knowledge of the creditor, or is transferred in any transaction known by the transferee to be for the personal benefit of the fiduciary, the creditor or other transferee is liable to the principal, if the fiduciary in fact commits a breach of his obligation as fiduciary in transferring the instrument.

No Change Since 1953

22-1-5. Checks -- Drawn by fiduciaries, payable to third persons.

If a check or other bill of exchange is drawn by a fiduciary as such, or in the name of his principal by a fiduciary empowered to draw such instrument in the name of his principal, the payee is not bound to inquire whether the fiduciary is committing a breach of his obligation as fiduciary in drawing or delivering the instrument, and is not chargeable with notice that the fiduciary is committing a breach of his obligation as fiduciary, unless he takes the instrument with actual knowledge of such breach or with

knowledge of such facts that his action in taking the instrument amounts to bad faith. If, however, such instrument is payable to a personal creditor of the fiduciary and delivered to the creditor in payment of, or as security for, a personal debt of the fiduciary to the actual knowledge of the creditor, or is drawn and delivered in any transaction known by the payee to be for the personal benefit of the fiduciary, the creditor or other payee is liable to the principal, if the fiduciary in fact commits a breach of his obligation as fiduciary in drawing or delivering the instrument.

No Change Since 1953

22-1-6. Checks drawn by or payable to fiduciary.

If a check or other bill of exchange is drawn by a fiduciary as such, or in the name of his principal by a fiduciary empowered to draw such instrument in the name of his principal, payable to the fiduciary personally, or payable to a third person and by him transferred to the fiduciary, and is thereafter transferred by the fiduciary, whether in payment of a personal debt of the fiduciary or otherwise, the transferee is not bound to inquire whether the fiduciary is committing a breach of his obligation as fiduciary in transferring the instrument, and is not chargeable with notice that the fiduciary is committing a breach of his obligation as fiduciary, unless he takes the instrument with actual knowledge of such breach or with knowledge of such facts that his action in taking the instrument amounts to bad faith.

No Change Since 1953

22-1-7. Bank deposits in name of fiduciary.

If a deposit is made in a bank to the credit of a fiduciary as such, the bank is authorized to pay the amount of the deposit or any part thereof upon the check of the fiduciary, signed with the name in which such deposit is entered, without being liable to the principal, unless the bank pays the check with actual knowledge that the fiduciary is committing a breach of his obligation as fiduciary in drawing the check, or with knowledge of such facts that its action in paying the check amounts to bad faith. If, however, such a check is payable to the drawee bank and is delivered to it in payment of, or as security for, a personal debt of the fiduciary to it, the bank is liable to the principal, if the fiduciary in fact commits a breach of his obligation as fiduciary in drawing or delivering the check.

No Change Since 1953

22-1-8. Checks drawn in name of principal.

If a check is drawn upon the account of his principal in a bank by a fiduciary who is empowered to draw checks upon his principal's account, the bank is authorized to pay such check without being liable to the principal, unless the bank pays the check with actual knowledge that the fiduciary is committing a breach of his obligation as fiduciary in drawing such check, or with knowledge of such facts that its action in paying the check amounts to bad faith. If, however, such a check is payable to the drawee bank and is delivered to it in payment of, or as security for, a personal debt of the

fiduciary to it, the bank is liable to the principal, if the fiduciary in fact commits a breach of his obligation as fiduciary in drawing or delivering the check.

No Change Since 1953

22-1-9. Deposits in fiduciary's personal account.

If a fiduciary makes a deposit in a bank to his personal credit of checks drawn by him upon an account in his own name as fiduciary, or of checks payable to him as fiduciary, or of checks drawn by him upon an account in the name of his principal, if he is empowered to draw checks thereon, or of checks payable to his principal and indorsed by him, if he is empowered to indorse such checks, or if he otherwise makes a deposit of funds held by him as fiduciary, the bank receiving such deposit is not bound to inquire whether the fiduciary is committing thereby a breach of his obligation as fiduciary; and the bank is authorized to pay the amount of the deposit or any part thereof upon the personal check of the fiduciary without being liable to the principal, unless the bank receives the deposit or pays the check with actual knowledge that the fiduciary is committing a breach of his obligation as fiduciary in making such deposit or in drawing such check, or with knowledge of such facts that its action in receiving the deposit or paying the check amounts to bad faith.

No Change Since 1953

22-1-10. Deposits in name of several trustees.

When a deposit is made in a bank in the name of two or more persons as trustees and a check is drawn upon the trust account by any trustee or trustees authorized by the other trustee or trustees to draw checks upon the trust account, neither the payee nor other holder nor the bank is bound to inquire whether it is a breach of trust to authorize such trustee or trustees to draw checks upon the trust account, and is not liable, unless the circumstances are such that the action of the payee or other holder or the bank amounts to bad faith.

No Change Since 1953

22-1-11. Transactions prior to May 12, 1925, excepted.

The provisions of this chapter do not apply to transactions taking place prior to May 12, 1925.

Amended by Chapter 297, 2011 General Session

22-2-1. Death of trustee -- Trust estate vests in successor.

Upon the death of a sole or surviving trustee of an express trust the trust estate does not descend to his heirs or pass to his personal representatives, but shall by virtue hereof, upon the appointment and qualification of a successor to such trustee, become immediately vested in such successor in trust.

No Change Since 1953

22-3-101. Title.

This chapter is known as the "Uniform Principal and Income Act."

Enacted by Chapter 285, 2004 General Session

22-3-102. Definitions.

In this chapter:

(1) "Accounting period" means a calendar year unless another 12-month period is selected by a fiduciary. The term includes a portion of a calendar year or other 12-month period that begins when an income interest begins or ends when an income interest ends.

(2) "Beneficiary" includes, in the case of a decedent's estate, an heir and devisee and, in the case of a trust, an income beneficiary and a remainder beneficiary.

(3) "Fiduciary" means a personal representative or a trustee. The term includes an executor, administrator, successor personal representative, special administrator, and a person performing substantially the same function.

(4) "Income" means money or property that a fiduciary receives as current return from a principal asset. The term includes a portion of receipts from a sale, exchange, or liquidation of a principal asset, to the extent provided in Part 4, Allocation of Receipts During Administration of Trust.

(5) "Income beneficiary" means a person to whom net income of a trust is or may be payable.

(6) "Income interest" means the right of an income beneficiary to receive all or part of net income, whether the terms of the trust require it to be distributed or authorize it to be distributed in the trustee's discretion.

(7) "Mandatory income interest" means the right of an income beneficiary to receive net income that the terms of the trust require the fiduciary to distribute.

(8) "Net income" means the total receipts allocated to income during an accounting period minus the disbursements made from income during the period, plus or minus transfers under this chapter to or from income during the period.

(9) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government; governmental subdivision, agency, or instrumentality; public corporation, or any other legal or commercial entity.

(10) "Principal" means property held in trust for distribution to a remainder beneficiary when the trust terminates.

(11) "Remainder beneficiary" means a person entitled to receive principal when an income interest ends.

(12) "Terms of a trust" means the manifestation of the intent of a settlor or decedent with respect to the trust, expressed in a manner that admits of its proof in a judicial proceeding, whether by written or spoken words or by conduct.

(13) "Trustee" includes an original, additional, or successor trustee, whether or not appointed or confirmed by a court.

Enacted by Chapter 285, 2004 General Session

22-3-103. Fiduciary duties -- General principles.

(1) In allocating receipts and disbursements to or between principal and income, and with respect to any matter within the scope of Parts 2 and 3, a fiduciary:

(a) shall administer a trust or estate in accordance with the terms of the trust or the will, even if there is a different provision in this chapter;

(b) may administer a trust or estate by the exercise of a discretionary power of administration given to the fiduciary by the terms of the trust or the will, even if the exercise of the power produces a result different from a result required or permitted by this chapter;

(c) shall administer a trust or estate in accordance with this chapter if the terms of the trust or the will do not contain a different provision or do not give the fiduciary a discretionary power of administration; and

(d) shall add a receipt or charge a disbursement to principal to the extent that the terms of the trust and this chapter do not provide a rule for allocating the receipt or disbursement to or between principal and income.

(2) In exercising the power to adjust under Subsection 22-3-104(1) or a discretionary power of administration regarding a matter within the scope of this chapter, whether granted by the terms of a trust, a will, or this chapter, a fiduciary shall administer a trust or estate impartially, based on what is fair and reasonable to all of the beneficiaries, except to the extent that the terms of the trust or the will clearly manifest an intention that the fiduciary shall or may favor one or more of the beneficiaries. A determination in accordance with this chapter is presumed to be fair and reasonable to all of the beneficiaries.

Enacted by Chapter 285, 2004 General Session

22-3-104. Trustee's power to adjust.

(1) A trustee may adjust between principal and income to the extent the trustee considers necessary if the trustee invests and manages trust assets as a prudent investor, the terms of the trust describe the amount that may or shall be distributed to a beneficiary by referring to the trust's income, and the trustee determines, after applying the rules in Subsection 22-3-103(1), that the trustee is unable to comply with Subsection 22-3-103(2).

(2) In deciding whether and to what extent to exercise the power conferred by Subsection (1), a trustee shall consider all factors relevant to the trust and its beneficiaries, including the following factors to the extent they are relevant:

- (a) the nature, purpose, and expected duration of the trust;
- (b) the intent of the settlor;
- (c) the identity and circumstances of the beneficiaries;
- (d) the needs for liquidity, regularity of income, and preservation and appreciation of capital;
- (e) (i) the assets held in the trust;
- (ii) the extent to which the assets consist of financial assets, interests in closely held enterprises, tangible and intangible personal property, or real property;
- (iii) the extent to which an asset is used by a beneficiary; and
- (iv) whether an asset was purchased by the trustee or received from the settlor;

(f) the net amount allocated to income under the other sections of this chapter and the increase or decrease in the value of the principal assets, which the trustee may estimate as to assets for which market values are not readily available;

(g) whether and to what extent the terms of the trust give the trustee the power to invade principal or accumulate income or prohibit the trustee from invading principal or accumulating income, and the extent to which the trustee has exercised a power from time to time to invade principal or accumulate income;

(h) the actual and anticipated effect of economic conditions on principal and income and effects of inflation and deflation; and

(i) the anticipated tax consequences of an adjustment.

(3) A trustee may not make an adjustment:

(a) that diminishes the income interest in a trust that requires all of the income to be paid at least annually to a spouse and for which an estate tax or gift tax marital deduction would be allowed, in whole or in part, if the trustee did not have the power to make the adjustment;

(b) that reduces the actuarial value of the income interest in a trust to which a person transfers property with the intent to qualify for a gift tax exclusion;

(c) that changes the amount payable to a beneficiary as a fixed annuity or a fixed fraction of the value of the trust assets;

(d) from any amount that is permanently set aside for charitable purposes under a will or the terms of a trust unless both income and principal are so set aside;

(e) if possessing or exercising the power to make an adjustment causes an individual to be treated as the owner of all or part of the trust for income tax purposes, and the individual would not be treated as the owner if the trustee did not possess the power to make an adjustment;

(f) if possessing or exercising the power to make an adjustment causes all or part of the trust assets to be included for estate tax purposes in the estate of an individual who has the power to remove a trustee or appoint a trustee, or both, and the assets would not be included in the estate of the individual if the trustee did not possess the power to make an adjustment;

(g) if the trustee is a beneficiary of the trust; or

(h) if the trustee is not a beneficiary, but the adjustment would benefit the trustee directly or indirectly.

(4) If Subsection (3)(e), (f), (g), or (h) applies to a trustee and there is more than one trustee, a cotrustee to whom the provision does not apply may make the adjustment unless the exercise of the power by the remaining trustee or trustees is not permitted by the terms of the trust.

(5) A trustee may release the entire power conferred by Subsection (1) or may release only the power to adjust from income to principal or the power to adjust from principal to income if the trustee is uncertain about whether possessing or exercising the power will cause a result described in Subsections (3)(a) through (f) or Subsection (3)(h) or if the trustee determines that possessing or exercising the power will or may deprive the trust of a tax benefit or impose a tax burden not described in Subsection (3). The release may be permanent or for a specified period, including a period measured by the life of an individual.

(6) Terms of a trust that limit the power of a trustee to make an adjustment

between principal and income do not affect the application of this section unless it is clear from the terms of the trust that the terms are intended to deny the trustee the power of adjustment conferred by Subsection (1).

Amended by Chapter 297, 2011 General Session

22-3-105. Judicial control of discretionary power.

(1) The court may not order a fiduciary to change a decision to exercise or not to exercise a discretionary power conferred by this chapter unless it determines that the decision was an abuse of the fiduciary's discretion. A fiduciary's decision is not an abuse of discretion merely because the court would have exercised the power in a different manner or would not have exercised the power.

(2) The decisions to which Subsection (1) applies include:

(a) A decision under Subsection 22-3-104(1) as to whether and to what extent an amount should be transferred from principal to income or from income to principal.

(b) A decision regarding the factors that are relevant to the trust and its beneficiaries, the extent to which the factors are relevant, and the weight, if any, to be given to those factors, in deciding whether and to what extent to exercise the discretionary power conferred by Subsection 22-3-104(1).

(3) If the court determines that a fiduciary has abused the fiduciary's discretion, the court may place the income and remainder beneficiaries in the positions they would have occupied if the discretion had not been abused, according to the following rules:

(a) To the extent that the abuse of discretion has resulted in no distribution to a beneficiary or in a distribution that is too small, the court shall order the fiduciary to distribute from the trust to the beneficiary an amount that the court determines will restore the beneficiary, in whole or in part, to the beneficiary's appropriate position.

(b) To the extent that the abuse of discretion has resulted in a distribution to a beneficiary which is too large, the court shall place the beneficiaries, the trust, or both, in whole or in part, in their appropriate positions by ordering the fiduciary to withhold an amount from one or more future distributions to the beneficiary who received the distribution that was too large or ordering that beneficiary to return some or all of the distribution to the trust.

(c) To the extent that the court is unable, after applying Subsections (3)(a) and (b), to place the beneficiaries, the trust, or both, in the positions they would have occupied if the discretion had not been abused, the court may order the fiduciary to pay an appropriate amount from its own funds to one or more of the beneficiaries or the trust or both.

(4) Upon petition by the fiduciary, the court having jurisdiction over a trust or estate shall determine whether a proposed exercise or nonexercise by the fiduciary of a discretionary power conferred by this chapter will result in an abuse of the fiduciary's discretion. If the petition describes the proposed exercise or nonexercise of the power and contains sufficient information to inform the beneficiaries of the reasons for the proposal, the facts upon which the fiduciary relies, and an explanation of how the income and remainder beneficiaries will be affected by the proposed exercise or nonexercise of the power, a beneficiary who challenges the proposed exercise or nonexercise has the burden of establishing that it will result in an abuse of discretion.

Enacted by Chapter 285, 2004 General Session

22-3-106. Adjustments.

Nothing in this chapter is intended to create or imply a duty to make an adjustment, and a trustee is not liable for not considering whether to make an adjustment or for choosing not to make an adjustment.

Enacted by Chapter 285, 2004 General Session

22-3-107. Notice of proposed action -- Objections by beneficiary -- Liability of trustee -- Proceedings.

(1) A trustee may give a notice of proposed action regarding a matter governed by this chapter as provided in this section. For the purpose of this section, a proposed action includes a course of action and a decision not to take action.

(2) The trustee shall mail notice of the proposed action to all adult beneficiaries who are receiving, or are entitled to receive, income under the trust or to receive a distribution of principal if the trust were terminated at the time the notice is given.

(3) Notice of proposed action need not be given to any person who consents in writing to the proposed action. The consent may be executed at any time before or after the proposed action is taken.

(4) The notice of proposed action shall state that it is given pursuant to this section and the following:

(a) the name and mailing address of the trustee;

(b) the name and telephone number of a person who may be contacted for additional information;

(c) a description of the action proposed to be taken and an explanation of the reasons for the action;

(d) the time within which objections to the proposed action can be made, which shall be at least 30 days from the mailing of the notice of proposed action; and

(e) the date on or after which the proposed action may be taken or is effective.

(5) A beneficiary may object to the proposed action by mailing a written objection to the trustee at the address stated in the notice of proposed action within the time period specified in the notice of proposed action.

(6) A trustee is not liable to a beneficiary for an action regarding a matter governed by this chapter if the trustee does not receive a written objection to the proposed action from a beneficiary within the applicable period and the other requirements of this section are satisfied. If no beneficiary entitled to notice objects under this section, the trustee is not liable to any current or future beneficiary with respect to the proposed action.

(7) If the trustee receives a written objection within the applicable period, either the trustee or a beneficiary may petition the court to have the proposed action taken as proposed, taken with modifications, or denied. In the proceeding, a beneficiary objecting to the proposed action has the burden of proving that the trustee's proposed action should not be taken. A beneficiary who has not objected is not estopped from opposing the proposed action in the proceeding.

(8) If the trustee decides not to implement the proposed action, the trustee shall notify the beneficiaries of the decision not to take the action and the reasons for the decision. The trustee's decision not to implement the proposed action does not give rise to liability to any current or future beneficiary.

(9) A beneficiary may petition the court to have the action taken, and has the burden of proving that it should be taken.

Enacted by Chapter 285, 2004 General Session

22-3-201. Determination and distribution of net income.

After a decedent dies, in the case of an estate, or after an income interest in a trust ends, the following rules apply:

(1) A fiduciary of an estate or of a terminating income interest shall determine the amount of net income and net principal receipts received from property specifically given to a beneficiary under the rules in Parts 3 through 5 which apply to trustees and the rules in Subsection (5). The fiduciary shall distribute the net income and net principal receipts to the beneficiary who is to receive the specific property.

(2) A fiduciary shall determine the remaining net income of a decedent's estate or a terminating income interest under the rules in Parts 3 through 5 which apply to trustees and by:

(a) including in net income all income from property used to discharge liabilities;
(b) paying from income or principal, in the fiduciary's discretion, fees of attorneys, accountants, and fiduciaries; court costs and other expenses of administration; and interest on death taxes, but the fiduciary may pay those expenses from income of property passing to a trust for which the fiduciary claims an estate tax marital or charitable deduction only to the extent that the payment of those expenses from income will not cause the reduction or loss of the deduction; and

(c) paying from principal all other disbursements made or incurred in connection with the settlement of a decedent's estate or the winding up of a terminating income interest, including debts, funeral expenses, disposition of remains, family allowances, and death taxes and related penalties that are apportioned to the estate or terminating income interest by the will, the terms of the trust, or applicable law.

(3) A fiduciary shall distribute to a beneficiary who receives a pecuniary amount outright, the interest or any other amount provided by the will, the terms of the trust, or applicable law from net income determined under Subsection (2) or from principal to the extent that net income is insufficient. If a beneficiary is to receive a pecuniary amount outright from a trust after an income interest ends and no interest or other amount is provided for by the terms of the trust or applicable law, the fiduciary shall distribute the interest or other amount to which the beneficiary would be entitled under applicable law if the pecuniary amount were required to be paid under a will.

(4) A fiduciary shall distribute the net income remaining after distributions required by Subsection (3) in the manner described in Section 22-3-202 to all other beneficiaries, including a beneficiary who receives a pecuniary amount in trust, even if the beneficiary holds an unqualified power to withdraw assets from the trust or other presently exercisable general power of appointment over the trust.

(5) A fiduciary may not reduce principal or income receipts from property

described in Subsection (1) because of a payment described in Section 22-3-501 or 22-3-502 to the extent that the will, the terms of the trust, or applicable law requires the fiduciary to make the payment from assets other than the property or to the extent that the fiduciary recovers or expects to recover the payment from a third party. The net income and principal receipts from the property are determined by including all of the amounts the fiduciary receives or pays with respect to the property, whether those amounts accrued or became due before, on, or after the date of a decedent's death or an income interest's terminating event, and by making a reasonable provision for amounts that the fiduciary believes the estate or terminating income interest may become obligated to pay after the property is distributed.

Enacted by Chapter 285, 2004 General Session

22-3-202. Distribution to residuary and remainder beneficiaries.

(1) Each beneficiary described in Subsection 22-3-201(4) is entitled to receive a portion of the net income equal to the beneficiary's fractional interest in undistributed principal assets, using values as of the distribution date. If a fiduciary makes more than one distribution of assets to beneficiaries to whom this section applies, each beneficiary, including one who does not receive part of the distribution, is entitled, as of each distribution date, to the net income the fiduciary has received after the date of death or terminating event or earlier distribution date but has not distributed as of the current distribution date.

(2) In determining a beneficiary's share of net income, the following rules apply:

(a) The beneficiary is entitled to receive a portion of the net income equal to the beneficiary's fractional interest in the undistributed principal assets immediately before the distribution date, including assets that later may be sold to meet principal obligations.

(b) The beneficiary's fractional interest in the undistributed principal assets shall be calculated without regard to property specifically given to a beneficiary and property required to pay pecuniary amounts not in trust.

(c) The beneficiary's fractional interest in the undistributed principal assets shall be calculated on the basis of the aggregate value of those assets as of the distribution date without reducing the value by any unpaid principal obligation.

(d) The distribution date for purposes of this section may be the date as of which the fiduciary calculates the value of the assets if that date is reasonably near the date on which assets are actually distributed.

(3) If a fiduciary does not distribute all of the collected but undistributed net income to each person as of a distribution date, the fiduciary shall maintain appropriate records showing the interest of each beneficiary in that net income.

(4) A fiduciary may apply the rules in this section, to the extent that the fiduciary considers it appropriate, to net gain or loss realized after the date of death or terminating event or earlier distribution date from the disposition of a principal asset if this section applies to the income from the asset.

Amended by Chapter 297, 2011 General Session

22-3-301. When right to income begins and ends.

(1) An income beneficiary is entitled to net income from the date on which the income interest begins. An income interest begins on the date specified in the terms of the trust or, if no date is specified, on the date an asset becomes subject to a trust or successive income interest.

(2) An asset becomes subject to a trust:

(a) on the date it is transferred to the trust in the case of an asset that is transferred to a trust during the transferor's life;

(b) on the date of a testator's death in the case of an asset that becomes subject to a trust by reason of a will, even if there is an intervening period of administration of the testator's estate; or

(c) on the date of an individual's death in the case of an asset that is transferred to a fiduciary by a third party because of the individual's death.

(3) An asset becomes subject to a successive income interest on the day after the preceding income interest ends, as determined under Subsection (4), even if there is an intervening period of administration to wind up the preceding income interest.

(4) An income interest ends on the day before an income beneficiary dies or another terminating event occurs, or on the last day of a period during which there is no beneficiary to whom a trustee may distribute income.

Enacted by Chapter 285, 2004 General Session

22-3-302. Apportionment of receipts and disbursements when decedent dies or income interest begins.

(1) A trustee shall allocate an income receipt or disbursement other than one to which Subsection 22-3-201(1) applies to principal if its due date occurs before a decedent dies in the case of an estate or before an income interest begins in the case of a trust or successive income interest.

(2) A trustee shall allocate an income receipt or disbursement to income if its due date occurs on or after the date on which a decedent dies or an income interest begins and it is a periodic due date. An income receipt or disbursement shall be treated as accruing from day to day if its due date is not periodic or it has no due date. The portion of the receipt or disbursement accruing before the date on which a decedent dies or an income interest begins shall be allocated to principal and the balance shall be allocated to income.

(3) An item of income or an obligation is due on the date the payer is required to make a payment. If a payment date is not stated, there is no due date for the purposes of this chapter. Distributions to shareholders or other owners from an entity to which Section 22-3-401 applies are considered to be due on the date fixed by the entity for determining who is entitled to receive the distribution or, if no date is fixed, on the declaration date for the distribution. A due date is periodic for receipts or disbursements that must be paid at regular intervals under a lease or an obligation to pay interest or if an entity customarily makes distributions at regular intervals.

Amended by Chapter 297, 2011 General Session

22-3-303. Apportionment when income interest ends.

(1) In this section, "undistributed income" means net income received before the date on which an income interest ends. The term does not include an item of income or expense that is due or accrued or net income that has been added or is required to be added to principal under the terms of the trust.

(2) When a mandatory income interest ends, the trustee shall pay to a mandatory income beneficiary who survives that date, or the estate of a deceased mandatory income beneficiary whose death causes the interest to end, the beneficiary's share of the undistributed income that is not disposed of under the terms of the trust unless the beneficiary has an unqualified power to revoke more than 5% of the trust immediately before the income interest ends. In the latter case, the undistributed income from the portion of the trust that may be revoked shall be added to principal.

(3) When a trustee's obligation to pay a fixed annuity or a fixed fraction of the value of the trust's assets ends, the trustee shall prorate the final payment if and to the extent required by applicable law to accomplish a purpose of the trust or its settlor relating to income, gift, estate, or other tax requirements.

Amended by Chapter 297, 2011 General Session

22-3-401. Receipts from entities -- Character of receipts.

(1) In this section, "entity" means a corporation, partnership, limited liability company, regulated investment company, real estate investment trust, common trust fund, or any other organization in which a trustee has an interest other than a trust or estate to which Section 22-3-402 applies, a business or activity to which Section 22-3-403 applies, or an asset-backed security to which Section 22-3-415 applies.

(2) Except as otherwise provided in this section, a trustee shall allocate to income money received from an entity.

(3) A trustee shall allocate the following receipts from an entity to principal:

- (a) property other than money;
- (b) money received in one distribution or a series of related distributions in exchange for part or all of a trust's interest in the entity;
- (c) money received in total or partial liquidation of the entity; and
- (d) money received from an entity that is a regulated investment company or a real estate investment trust if the money distributed is a capital gain dividend for federal income tax purposes.

(4) Money is received in partial liquidation:

(a) to the extent that the entity, at or near the time of a distribution, indicates that it is a distribution in partial liquidation; or

(b) if the total amount of money and property received in a distribution or series of related distributions is greater than 20% of the entity's gross assets, as shown by the entity's year-end financial statements immediately preceding the initial receipt.

(5) Money is not received in partial liquidation, nor may it be taken into account under Subsection (4)(b), to the extent that it does not exceed the amount of income tax that a trustee or beneficiary must pay on taxable income of the entity that distributes the money.

(6) A trustee may rely upon a statement made by an entity about the source or

character of a distribution if the statement is made at or near the time of distribution by the entity's board of directors or other person or group of persons authorized to exercise powers to pay money or transfer property comparable to those of a corporation's board of directors.

Enacted by Chapter 285, 2004 General Session

22-3-402. Receipts from entities -- Distribution from trust or estate.

A trustee shall allocate to income an amount received as a distribution of income from a trust or an estate in which the trust has an interest other than a purchased interest, and shall allocate to principal an amount received as a distribution of principal from such a trust or estate. If a trustee purchases an interest in a trust that is an investment entity, or a decedent or donor transfers an interest in such a trust to a trustee, Section 22-3-401 or 22-3-415 applies to a receipt from the trust.

Enacted by Chapter 285, 2004 General Session

22-3-403. Receipts from entities -- Business and other activities conducted by trustee.

(1) If a trustee who conducts a business or other activity determines that it is in the best interest of all the beneficiaries to account separately for the business or activity instead of accounting for it as part of the trust's general accounting records, the trustee may maintain separate accounting records for its transactions, whether or not its assets are segregated from other trust assets.

(2) A trustee who accounts separately for a business or other activity may determine the extent to which its net cash receipts shall be retained for working capital, the acquisition or replacement of fixed assets, and other reasonably foreseeable needs of the business or activity, and the extent to which the remaining net cash receipts are accounted for as principal or income in the trust's general accounting records. If a trustee sells assets of the business or other activity, other than in the ordinary course of the business or activity, the trustee shall account for the net amount received as principal in the trust's general accounting records to the extent the trustee determines that the amount received is no longer required in the conduct of the business.

(3) Activities for which a trustee may maintain separate accounting records include:

- (a) retail, manufacturing, service, and other traditional business activities;
- (b) farming;
- (c) raising and selling livestock and other animals;
- (d) management of rental properties;
- (e) extraction of minerals and other natural resources;
- (f) timber operations; and
- (g) activities to which Section 22-3-414 applies.

Amended by Chapter 297, 2011 General Session

22-3-404. Receipts not normally apportioned -- Principal receipts.

A trustee shall allocate to principal:

(1) to the extent not allocated to income under this chapter, assets received from a transferor during the transferor's lifetime, a decedent's estate, a trust with a terminating income interest, or a payer under a contract naming the trust or its trustee as beneficiary;

(2) money or other property received from the sale, exchange, liquidation, or change in form of a principal asset, including realized profit, subject to this part;

(3) amounts recovered from third parties to reimburse the trust because of disbursements described in Subsection 22-3-502(1)(g) or for other reasons to the extent not based on the loss of income;

(4) proceeds of property taken by eminent domain, but a separate award made for the loss of income with respect to an accounting period during which a current income beneficiary had a mandatory income interest is income;

(5) net income received in an accounting period during which there is no beneficiary to whom a trustee may or must distribute income; and

(6) other receipts as provided in Sections 22-3-408 through 22-3-415.

Enacted by Chapter 285, 2004 General Session

22-3-405. Receipts not normally apportioned -- Rental property.

To the extent that a trustee accounts for receipts from rental property pursuant to this section, the trustee shall allocate to income an amount received as rent of real or personal property, including an amount received for cancellation or renewal of a lease. An amount received as a refundable deposit, including a security deposit or a deposit that is to be applied as rent for future periods, shall be added to principal and held subject to the terms of the lease and is not available for distribution to a beneficiary until the trustee's contractual obligations have been satisfied with respect to that amount.

Amended by Chapter 297, 2011 General Session

22-3-406. Receipts not normally apportioned -- Obligation to pay money.

(1) An amount received as interest, whether determined at a fixed, variable, or floating rate, on an obligation to pay money to the trustee, including an amount received as consideration for prepaying principal, shall be allocated to income without any provision for amortization of premium.

(2) A trustee shall allocate to principal an amount received from the sale, redemption, or other disposition of an obligation to pay money to the trustee more than one year after it is purchased or acquired by the trustee, including an obligation whose purchase price or value when it is acquired is less than its value at maturity. If the obligation matures within one year after it is purchased or acquired by the trustee, an amount received in excess of its purchase price or its value when acquired by the trust shall be allocated to income.

(3) This section does not apply to an obligation to which Section 22-3-409, 22-3-410, 22-3-411, 22-3-412, 22-3-414, or 22-3-415 applies.

Amended by Chapter 297, 2011 General Session

22-3-407. Receipts not normally apportioned -- Insurance policies and similar contracts.

(1) Except as otherwise provided in Subsection (2), a trustee shall allocate to principal the proceeds of a life insurance policy or other contract in which the trust or its trustee is named as beneficiary, including a contract that insures the trust or its trustee against loss for damage to, destruction of, or loss of title to a trust asset. The trustee shall allocate dividends on an insurance policy to income if the premiums on the policy are paid from income, and to principal if the premiums are paid from principal.

(2) A trustee shall allocate to income proceeds of a contract that insures the trustee against loss of occupancy or other use by an income beneficiary, loss of income, or, subject to Section 22-3-403, loss of profits from a business.

(3) This section does not apply to a contract to which Section 22-3-409 applies.

Enacted by Chapter 285, 2004 General Session

22-3-408. Receipts normally apportioned -- Insubstantial allocations not required.

If a trustee determines that an allocation between principal and income required by Section 22-3-409, 22-3-410, 22-3-411, 22-3-412, or 22-3-415 is insubstantial, the trustee may allocate the entire amount to principal unless one of the circumstances described in Subsection 22-3-104(3) applies to the allocation. This power may be exercised by a cotrustee in the circumstances described in Subsection 22-3-104(4) and may be released for the reasons and in the manner described in Subsection 22-3-104(5). An allocation is presumed to be insubstantial if:

(1) the amount of the allocation would increase or decrease net income in an accounting period, as determined before the allocation, by less than 10%; or

(2) the value of the asset producing the receipt for which the allocation would be made is less than 10% of the total value of the trust's assets at the beginning of the accounting period.

Enacted by Chapter 285, 2004 General Session

22-3-409. Receipts normally apportioned -- Deferred compensation, annuities, and similar payments.

(1) As used in this section:

(a) "Payment" means a payment that a trustee may receive over a fixed number of years or during the life of one or more individuals because of services rendered or property transferred to the payer in exchange for future payments. The term includes a payment made in money or property from the payer's general assets or from a separate fund created by the payer. For the purposes of Subsections (4), (5), (6), and (7), the term also includes any payment from a separate fund, regardless of the reason for the payment.

(b) "Separate fund" includes a private or commercial annuity, an individual retirement account, and a pension, profit-sharing, stock-bonus, or stock-ownership plan.

(2) To the extent that a payment is characterized as interest, a dividend or a payment made in lieu of interest or a dividend, a trustee shall allocate the payment to

income. The trustee shall allocate to principal the balance of the payment and any other payment received in the same accounting period that is not characterized as interest, a dividend, or an equivalent payment.

(3) If no part of a payment is characterized as interest, a dividend, or an equivalent payment, and all or part of the payment is required to be made, a trustee shall allocate to income 10% of the part that is required to be made during the accounting period and the balance to principal. If no part of a payment is required to be made or the payment received is the entire amount to which the trustee is entitled, the trustee shall allocate the entire payment to principal. For purposes of this Subsection (3), a payment is not "required to be made" to the extent that it is made because the trustee exercises a right of withdrawal.

(4) Except as otherwise provided in Subsection (5), Subsections (6) and (7) apply, and Subsections (2) and (3) do not apply, in determining the allocation of a payment made from a separate fund to:

(a) a trust to which an election to qualify for a marital deduction under Section 2056(b)(7) of the Internal Revenue Code of 1986 has been made; or

(b) a trust that qualifies for the marital deduction under Section 2056(b)(5) of the Internal Revenue Code of 1986.

(5) Subsections (4), (6), and (7) do not apply if and to the extent that the series of payments would, without the application of Subsection (4), qualify for the marital deduction under Section 2056(b)(7)(C) of the Internal Revenue Code of 1986.

(6) A trustee shall determine the internal income of each separate fund for the accounting period as if the separate fund were a trust subject to this chapter. Upon request of the surviving spouse, the trustee shall demand of the person administering the separate fund that this internal income be distributed to the trust. The trustee shall allocate a payment from the separate fund to income to the extent of the internal income of the separate fund and distribute that amount to the surviving spouse. The trustee shall allocate the balance to principal. Upon request of the surviving spouse, the trustee shall allocate principal to income to the extent the internal income of the separate fund exceeds payments made from the separate fund to the trust during the accounting period.

(7) If a trustee cannot determine the internal income of a separate fund but can determine the value of the separate fund, the internal income of the separate fund is considered to equal 4% of the fund's value, according to the most recent statement of value preceding the beginning of the accounting period. If the trustee can determine neither the internal income of the separate fund nor the fund's value, the internal income of the fund is considered to equal the product of the interest rate and the present value of the expected future payments, as determined under Section 7520 of the Internal Revenue Code of 1986 for the month preceding the accounting period for which the computation is made.

(8) This section does not apply to a payment to which Section 22-3-410 applies.

Amended by Chapter 96, 2009 General Session

22-3-410. Receipts normally apportioned -- Liquidating asset.

(1) In this section, "liquidating asset" means an asset whose value will diminish

or terminate because the asset is expected to produce receipts for a period of limited duration. The term includes a leasehold, patent, copyright, royalty right, and right to receive payments during a period of more than one year under an arrangement that does not provide for the payment of interest on the unpaid balance. The term does not include a payment subject to Section 22-3-409, resources subject to Section 22-3-411, timber subject to Section 22-3-412, an activity subject to Section 22-3-414, an asset subject to Section 22-3-415, or any asset for which the trustee establishes a reserve for depreciation under Section 22-3-503.

(2) A trustee shall allocate to income 10% of the receipts from a liquidating asset and the balance to principal.

Enacted by Chapter 285, 2004 General Session

22-3-411. Receipts normally apportioned -- Minerals, water, and other natural resources.

(1) To the extent that a trustee accounts for receipts from an interest in minerals or other natural resources pursuant to this section, the trustee shall allocate them as follows:

(a) If received as nominal delay rental or nominal annual rent on a lease, a receipt shall be allocated to income.

(b) If received from a production payment, a receipt shall be allocated to income if and to the extent that the agreement creating the production payment provides a factor for interest or its equivalent. The balance shall be allocated to principal.

(c) If an amount received as a royalty, shut-in-well payment, take-or-pay payment, bonus, or delay rental is more than nominal, 90% shall be allocated to principal and the balance to income.

(d) If an amount is received from a working interest or any other interest not provided for in Subsection (1)(a), (b), or (c), 90% of the net amount received shall be allocated to principal and the balance to income.

(2) An amount received on account of an interest in water that is renewable shall be allocated to income. If the water is not renewable, 90% of the amount shall be allocated to principal and the balance to income.

(3) This chapter applies whether or not a decedent or donor was extracting minerals, water, or other natural resources before the interest became subject to the trust.

(4) If a trust owns an interest in minerals, water, or other natural resources on May 3, 2004, the trustee may allocate receipts from the interest as provided in this chapter or in the manner used by the trustee before May 3, 2004. If the trust acquires an interest in minerals, water, or other natural resources after May 3, 2004, the trustee shall allocate receipts from the interest as provided in this chapter.

Amended by Chapter 297, 2011 General Session

22-3-412. Receipts normally apportioned -- Timber.

(1) To the extent that a trustee accounts for receipts from the sale of timber and related products pursuant to this section, the trustee shall allocate the net receipts:

(a) to income to the extent that the amount of timber removed from the land does not exceed the rate of growth of the timber during the accounting periods in which a beneficiary has a mandatory income interest;

(b) to principal to the extent that the amount of timber removed from the land exceeds the rate of growth of the timber or the net receipts are from the sale of standing timber;

(c) to or between income and principal if the net receipts are from the lease of timberland or from a contract to cut timber from land owned by a trust, by determining the amount of timber removed from the land under the lease or contract and applying the rules in Subsections 22-3-411(1)(a) and (b); or

(d) to principal to the extent that advance payments, bonuses, and other payments are not allocated pursuant to Subsection 22-3-411(1)(a), (b), or (c).

(2) In determining net receipts to be allocated pursuant to Subsection 22-3-411(1), a trustee shall deduct and transfer to principal a reasonable amount for depletion.

(3) This chapter applies whether or not a decedent or transferor was harvesting timber from the property before it became subject to the trust.

(4) If a trust owns an interest in timberland on May 3, 2004, the trustee may allocate net receipts from the sale of timber and related products as provided in this chapter or in the manner used by the trustee before May 3, 2004. If the trust acquires an interest in timberland after May 3, 2004, the trustee shall allocate net receipts from the sale of timber and related products as provided in this chapter.

Enacted by Chapter 285, 2004 General Session

22-3-413. Receipts normally apportioned -- Property not productive of income.

(1) If a marital deduction is allowed for all or part of a trust whose assets consist substantially of property that does not provide the spouse with sufficient income from or use of the trust assets, and if the amounts that the trustee transfers from principal to income under Section 22-3-104 and distributes to the spouse from principal pursuant to the terms of the trust are insufficient to provide the spouse with the beneficial enjoyment required to obtain the marital deduction, the spouse may require the trustee to make property productive of income, convert property within a reasonable time, or exercise the power conferred by Subsection 22-3-104(1). The trustee may decide which action or combination of actions to take.

(2) In cases not governed by Subsection (1), proceeds from the sale or other disposition of an asset are principal without regard to the amount of income the asset produces during any accounting period.

Enacted by Chapter 285, 2004 General Session

22-3-414. Receipts normally apportioned -- Derivatives and options.

(1) In this section, "derivative" means a contract or financial instrument or a combination of contracts and financial instruments which gives a trust the right or obligation to participate in some or all changes in the price of a tangible or intangible

asset or group of assets, or changes in a rate, an index of prices or rates, or other market indicator for an asset or a group of assets.

(2) To the extent that a trustee does not account under Section 22-3-403 for transactions in derivatives, the trustee shall allocate to principal receipts from and disbursements made in connection with those transactions.

(3) If a trustee grants an option to buy property from the trust, whether or not the trust owns the property when the option is granted, grants an option that permits another person to sell property to the trust, or acquires an option to buy property for the trust or an option to sell an asset owned by the trust, and the trustee or other owner of the asset is required to deliver the asset if the option is exercised, an amount received for granting the option shall be allocated to principal. An amount paid to acquire the option shall be paid from principal. A gain or loss realized upon the exercise of an option, including an option granted to a settlor of the trust for services rendered, shall be allocated to principal.

Amended by Chapter 297, 2011 General Session

22-3-415. Receipts normally apportioned -- Asset-backed securities.

(1) In this section, "asset-backed security" means an asset whose value is based upon the right it gives the owner to receive distributions from the proceeds of financial assets that provide collateral for the security. The term includes an asset that gives the owner the right to receive from the collateral financial assets only the interest or other current return or only the proceeds other than interest or current return. The term does not include an asset to which Section 22-3-401 or 22-3-409 applies.

(2) If a trust receives a payment from interest or other current return and from other proceeds of the collateral financial assets, the trustee shall allocate to income the portion of the payment which the payer identifies as being from interest or other current return and shall allocate the balance of the payment to principal.

(3) If a trust receives one or more payments in exchange for the trust's entire interest in an asset-backed security in one accounting period, the trustee shall allocate the payments to principal. If a payment is one of a series of payments that will result in the liquidation of the trust's interest in the security over more than one accounting period, the trustee shall allocate 10% of the payment to income and the balance to principal.

Enacted by Chapter 285, 2004 General Session

22-3-501. Disbursements from income.

A trustee shall make the following disbursements from income to the extent that they are not disbursements to which Subsection 22-3-201(2)(b) or (c) applies:

(1) 1/2 of the regular compensation of the trustee and of any person providing investment advisory or custodial services to the trustee;

(2) 1/2 of all expenses for accountings, judicial proceedings, or other matters that involve both the income and remainder interests;

(3) all of the other ordinary expenses incurred in connection with the administration, management, or preservation of trust property and the distribution of

income, including interest, ordinary repairs, regularly recurring taxes assessed against principal, and expenses of a proceeding or other matter that concerns primarily the income interest; and

(4) recurring premiums on insurance covering the loss of a principal asset or the loss of income from or use of the asset.

Enacted by Chapter 285, 2004 General Session

22-3-502. Disbursements from principal.

(1) A trustee shall make the following disbursements from principal:

(a) the remaining 1/2 of the disbursements described in Subsections 22-3-501(1) and (2);

(b) all of the trustee's compensation calculated on principal as a fee for acceptance, distribution, or termination, and disbursements made to prepare property for sale;

(c) payments on the principal of a trust debt;

(d) expenses of a proceeding that concerns primarily principal, including a proceeding to construe the trust or to protect the trust or its property;

(e) premiums paid on a policy of insurance not described in Subsection 22-3-501(4) of which the trust is the owner and beneficiary;

(f) estate, inheritance, and other transfer taxes, including penalties, apportioned to the trust; and

(g) disbursements related to environmental matters, including reclamation, assessing environmental conditions, remedying and removing environmental contamination, monitoring remedial activities and the release of substances, preventing future releases of substances, collecting amounts from persons liable or potentially liable for the costs of those activities, penalties imposed under environmental laws or regulations and other payments made to comply with those laws or regulations, statutory or common law claims by third parties, and defending claims based on environmental matters.

(2) If a principal asset is encumbered with an obligation that requires income from that asset to be paid directly to the creditor, the trustee shall transfer from principal to income an amount equal to the income paid to the creditor in reduction of the principal balance of the obligation.

Enacted by Chapter 285, 2004 General Session

22-3-503. Transfers from income to principal for depreciation.

(1) In this section, "depreciation" means a reduction in value due to wear, tear, decay, corrosion, or gradual obsolescence of a fixed asset having a useful life of more than one year.

(2) A trustee may transfer to principal a reasonable amount of the net cash receipts from a principal asset that is subject to depreciation, but may not transfer any amount for depreciation:

(a) of that portion of real property used or available for use by a beneficiary as a residence or of tangible personal property held or made available for the personal use

or enjoyment of a beneficiary;

(b) during the administration of a decedent's estate; or

(c) under this section if the trustee is accounting under Section 22-3-403 for the business or activity in which the asset is used.

(3) An amount transferred to principal need not be held as a separate fund.

Enacted by Chapter 285, 2004 General Session

22-3-504. Transfers from income to reimburse principal.

(1) If a trustee makes or expects to make a principal disbursement described in this section, the trustee may transfer an appropriate amount from income to principal in one or more accounting periods to reimburse principal or to provide a reserve for future principal disbursements.

(2) Principal disbursements to which Subsection (1) applies include the following, but only to the extent that the trustee has not been and does not expect to be reimbursed by a third party:

(a) an amount chargeable to income but paid from principal because it is unusually large, including extraordinary repairs;

(b) a capital improvement to a principal asset, whether in the form of changes to an existing asset or the construction of a new asset, including special assessments;

(c) disbursements made to prepare property for rental, including tenant allowances, leasehold improvements, and broker's commissions;

(d) periodic payments on an obligation secured by a principal asset to the extent that the amount transferred from income to principal for depreciation is less than the periodic payments; and

(e) disbursements described in Subsection 22-3-502(1)(g).

(3) If the asset whose ownership gives rise to the disbursements becomes subject to a successive income interest after an income interest ends, a trustee may continue to transfer amounts from income to principal as provided in Subsection (1).

Enacted by Chapter 285, 2004 General Session

22-3-505. Income taxes.

(1) A tax required to be paid by a trustee based on receipts allocated to income shall be paid from income.

(2) A tax required to be paid by a trustee based on receipts allocated to principal shall be paid from principal, even if the tax is called an income tax by the taxing authority.

(3) A tax required to be paid by a trustee on the trust's share of an entity's taxable income shall be paid:

(a) from income to the extent that receipts from the entity are allocated only to income;

(b) from principal to the extent that receipts from the entity are allocated only to principal;

(c) proportionately from principal and income to the extent that receipts from the entity are allocated to both income and principal; and

(d) from principal to the extent that the tax exceeds the total receipts from the entity.

(4) After applying Subsections (1) through (3), the trustee shall adjust income or principal receipts to the extent that the trust's taxes are reduced because the trust receives a deduction for payments made to a beneficiary.

Amended by Chapter 297, 2011 General Session

22-3-506. Adjustments between principal and income because of taxes.

(1) A fiduciary may make adjustments between principal and income to offset the shifting of economic interests or tax benefits between income beneficiaries and remainder beneficiaries which arise from:

(a) elections and decisions, other than those described in Subsection (2), that the fiduciary makes from time to time regarding tax matters;

(b) an income tax or any other tax that is imposed upon the fiduciary or a beneficiary as a result of a transaction involving or a distribution from the estate or trust; or

(c) the ownership by an estate or trust of an interest in an entity whose taxable income, whether or not distributed, is includable in the taxable income of the estate, trust, or a beneficiary.

(2) If the amount of an estate tax marital deduction or charitable contribution deduction is reduced because a fiduciary deducts an amount paid from principal for income tax purposes instead of deducting it for estate tax purposes, and as a result estate taxes paid from principal are increased and income taxes paid by an estate, trust, or beneficiary are decreased, each estate, trust, or beneficiary that benefits from the decrease in income tax shall reimburse the principal from which the increase in estate tax is paid. The total reimbursement shall equal the increase in the estate tax to the extent that the principal used to pay the increase would have qualified for a marital deduction or charitable contribution deduction but for the payment. The proportionate share of the reimbursement for each estate, trust, or beneficiary whose income taxes are reduced shall be the same as its proportionate share of the total decrease in income tax. An estate or trust shall reimburse principal from income.

Amended by Chapter 297, 2011 General Session

22-3-601. Uniformity of application and construction.

In applying and construing this chapter, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Amended by Chapter 297, 2011 General Session

22-3-602. Severability clause.

If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the

provisions of this chapter are severable.

Enacted by Chapter 285, 2004 General Session

22-3-603. Application of chapter to existing trusts and estates.

This chapter applies to every trust or decedent's estate existing on May 3, 2004 except as otherwise expressly provided in the will or terms of the trust or in this chapter.

Enacted by Chapter 285, 2004 General Session

22-3-604. Transitional provisions.

Section 22-3-409 applies to a trust described in Subsection 22-3-409(4) as follows:

(1) If the trust is not funded as of May 12, 2009, then Section 22-3-409 applies to the trust on the date of the decedent's death.

(2) If the trust is initially funded in the calendar year beginning January 1, 2009, then Section 22-3-409 applies to the trust on the date of the decedent's death.

(3) If the trust is not described in Subsection (1) or (2), then Section 22-3-409 applies to the trust as of January 1, 2009.

Enacted by Chapter 96, 2009 General Session

22-5-1. Title.

This chapter is known as the "Uniform Act for Simplification of Fiduciary Security Transfers."

Amended by Chapter 20, 1995 General Session

22-5-2. Definitions.

In this chapter, unless the context otherwise requires:

(1) "Assignment" includes any written stock power, bond power, bill of sale, deed, declaration of trust or other instrument of transfer.

(2) "Claim of beneficial interest" includes a claim of any interest by a decedent's legatee, distributee, heir or creditor, a beneficiary under a trust, a ward, a beneficial owner of a security registered in the name of a nominee, or a minor owner of a security registered in the name of a custodian, or a claim of any similar interest, whether the claim is asserted by the claimant or by a fiduciary or by any other authorized person in his behalf, and includes a claim that the transfer would be in breach of fiduciary duties.

(3) "Corporation" means a private or public corporation, association or trust issuing a security.

(4) "Fiduciary" means an executor, administrator, trustee, guardian, committee, conservator, curator, tutor, custodian or nominee.

(5) "Person" includes an individual, a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity.

(6) "Security" includes any share of stock, bond, debenture, note or other security issued by a corporation which is registered as to ownership on the books of the corporation.

(7) "Transfer" means a change on the books of a corporation in the registered ownership of a security.

(8) "Transfer agent" means a person employed or authorized by a corporation to transfer securities issued by the corporation.

Amended by Chapter 20, 1995 General Session

22-5-3. Registration of security in the name of a fiduciary.

A corporation or transfer agent registering a security in the name of a person who is a fiduciary or who is described as a fiduciary is not bound to inquire into the existence, extent, or correct description of the fiduciary relationship, and thereafter the corporation and its transfer agent may assume without inquiry that the newly registered owner continues to be the fiduciary until the corporation or transfer agent receives written notice that the fiduciary is no longer acting as such with respect to the particular security.

Enacted by Chapter 46, 1961 General Session

22-5-4. Assignment of security by a fiduciary.

Except as otherwise provided in this chapter, a corporation or transfer agent making a transfer of a security pursuant to an assignment by a fiduciary:

(1) may assume without inquiry that the assignment, even though to the fiduciary himself or to his nominee, is within his authority and capacity and is not in breach of his fiduciary duties;

(2) may assume without inquiry that the fiduciary has complied with any controlling instrument and with the law of the jurisdiction governing the fiduciary relationship, including any law requiring the fiduciary to obtain court approval of the transfer; and

(3) is not charged with notice of and is not bound to obtain or examine any court record or any recorded or unrecorded document relating to the fiduciary relationship or the assignment, even though the record or document is in its possession.

Amended by Chapter 20, 1995 General Session

22-5-5. Assignment of security by a fiduciary -- Evidence of appointment or incumbency.

A corporation or transfer agent making a transfer pursuant to an assignment by a fiduciary who is not the registered owner shall obtain the following evidence of appointment or incumbency:

(1) in the case of a fiduciary appointed or qualified by a court, a certificate issued by or under the direction or supervision of that court or an officer thereof and dated within 60 days before the transfer; or

(2) in any other case, a copy of a document showing the appointment or a

certificate issued by or on behalf of a person reasonably believed by the corporation or transfer agent to be responsible or, in the absence of such a document or certificate, other evidence reasonably deemed by the corporation or transfer agent to be appropriate. Corporations and transfer agents may adopt standards with respect to evidence of appointment or incumbency under this subsection provided such standards are not manifestly unreasonable. Neither the corporation nor transfer agent is charged with notice of the contents of any document obtained pursuant to this subsection except to the extent that the contents relate directly to the appointment or incumbency.

Amended by Chapter 20, 1995 General Session

22-5-6. Adverse claims to transfer of security by a fiduciary -- Notice.

(1) A person asserting a claim of beneficial interest adverse to the transfer of a security pursuant to an assignment by a fiduciary may give the corporation or transfer agent written notice of the claim. The corporation or transfer agent is not put on notice unless the written notice identifies the claimant, the registered owner and the issue of which the security is a part, provides an address for communications directed to the claimant and is received before the transfer. Nothing in this act relieves the corporation or transfer agent of any liability for making or refusing to make the transfer after it is so put on notice, unless it proceeds in the manner authorized in Subsection (2).

(2) As soon as practicable after the presentation of a security for transfer pursuant to an assignment by a fiduciary, a corporation or transfer agent which has received notice of a claim of beneficial interest adverse to the transfer may send notice of the presentation by registered or certified mail to the claimant at the address given by him. If the corporation or transfer agent so mails such a notice it shall withhold the transfer for 30 days after the mailing and shall then make the transfer unless restrained by a court order.

Amended by Chapter 20, 1995 General Session

22-5-7. Nonliability of corporation or transfer agent.

A corporation or transfer agent incurs no liability to any person by making a transfer or otherwise acting in a manner authorized by this act.

Enacted by Chapter 46, 1961 General Session

22-5-8. Nonliability of third persons.

(1) No person who participates in the acquisition, disposition, assignment or transfer of a security by or to a fiduciary including a person who guarantees the signature of the fiduciary is liable for participation in any breach of fiduciary duty by reason of failure to inquire whether the transaction involves such a breach unless it is shown that he acted with actual knowledge that the proceeds of the transaction were being or were to be used wrongfully for the individual benefit of the fiduciary or that the transaction was otherwise in breach of duty.

(2) If a corporation or transfer agent makes a transfer pursuant to an assignment by a fiduciary, a person who guaranteed the signature of the fiduciary is not

liable on the guarantee to any person to whom the corporation or transfer agent by reason of this act incurs no liability.

(3) This section does not impose any liability upon the corporation or its transfer agent.

Amended by Chapter 20, 1995 General Session

22-5-9. Territorial application of law to rights and duties of corporation or third persons.

(1) The rights and duties of a corporation and its transfer agents in registering a security in the name of a fiduciary or in making a transfer of a security pursuant to an assignment by a fiduciary are governed by the law of the jurisdiction under whose laws the corporation is organized.

(2) This chapter applies to the rights and duties of a person other than the corporation and its transfer agents with regard to acts and omissions in this state in connection with the acquisition, disposition, assignment, or transfer of a security by or to a fiduciary and of a person who guarantees in this state the signature of a fiduciary in connection with such a transaction.

Amended by Chapter 20, 1995 General Session

22-5-10. Tax obligations not affected by act.

This act does not affect any obligation of a corporation or transfer agent with respect to estate, inheritance, succession or other taxes imposed by the laws of this state.

Enacted by Chapter 46, 1961 General Session

22-5-11. Construction.

This act shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

Enacted by Chapter 46, 1961 General Session

22-6-1. Retirement trusts exempted from rules against perpetuities, accumulations or suspension of power of alienation.

No trust heretofore or hereafter created by an employer as part of a pension, stock bonus, disability, death benefit, profit sharing, retirement or similar plan, primarily for the benefit of some or all of such employers' employees, their families, appointees or beneficiaries, to which contributions are made by such employer or employees, or by both employer and employees, which trust is for the purpose of distributing to such employees or their families, beneficiaries, or appointees, the earnings or principal, or both, shall be deemed to be invalid by reason of any rule against perpetuities, or against accumulations, or concerning the suspension of the power of alienation of title to property, or any other law restricting or limiting the duration of trusts; and such a trust may continue in perpetuity or for such time as may be necessary to accomplish the

purposes for which it was created.

Enacted by Chapter 174, 1961 General Session

22-6-2. Income permitted to accumulate.

The income arising from or earned by the property held in such trust within the classifications mentioned, may be permitted to accumulate in accordance with the terms of such trust, for so long a time as may be permitted by the instrument creating the trust, or if no time is so specified, for such time as the trustee or trustees may deem necessary to accomplish the purposes for which the trust was created.

Enacted by Chapter 174, 1961 General Session

22-7-101. Title.

This chapter is known as the "Utah Unitrust Act."

Enacted by Chapter 244, 2013 General Session

22-7-102. Definitions.

As used in this chapter:

(1) "Disinterested person" means a person who is not a related or subordinate party, as defined in Section 672(c), Internal Revenue Code, with respect to the person then acting as trustee of the trust, and excludes the settlor of the trust and any interested trustee.

(2) "Generation-skipping transfer tax" is defined in Section 2611, Internal Revenue Code.

(3) "Income trust" means a trust, created by either an inter vivos or a testamentary instrument, which directs or permits the trustee to distribute the net income of the trust to one or more persons, either in fixed proportions or in amounts or proportions determined by the trustee. Notwithstanding the foregoing, a trust that otherwise is an income trust may not qualify under this chapter, if it may be subject to taxation under Sections 2001 or 2501, Internal Revenue Code, until the expiration of the period for filing the return, including extensions.

(4) "Interested distributee" means a person to whom distributions of income or principal can currently be made and who has the power to remove the existing trustee and designate as successor a person who may be a related or subordinate party, as defined in Section 672(c), Internal Revenue Code, with respect to the interested distributee.

(5) "Interested trustee" means:

(a) an individual trustee to whom the net income or principal of the trust can currently be distributed or would be distributed if the trust were to terminate and be distributed;

(b) any trustee who may be removed and replaced by an interested distributee;
or

(c) an individual trustee whose legal obligation to support a beneficiary may be satisfied by distributions of income and principal of the trust.

(6) "Settlor" means a person as defined in Section 75-7-103.

(7) "Total return unitrust" means an income trust that has been created in or converted under, meets the provisions of this chapter, and is invested and managed under the prudent investor rule of Title 75, Chapter 7, Part 9, Utah Uniform Prudent Investor Act.

(8) "Trustee" means all persons acting as trustee of the trust, except where expressly noted otherwise, whether acting within their discretion or on the direction of one or more persons acting in a fiduciary capacity.

(9) "Unitrust amount" means an amount computed as a percentage of the net fair market value of the trust.

(10) "Year" means a calendar year.

Enacted by Chapter 244, 2013 General Session

22-7-103. Trustee powers to convert trusts -- Requirements to make unitrust election.

(1) A trustee, other than an interested trustee, or, when two or more persons are acting as trustee, a majority of the trustees who are not interested trustees may, in the trustee's sole discretion and without the approval of the district court:

(a) elect to release the power to adjust described in Section 22-3-104 and to convert an income trust to a total return unitrust;

(b) reconvert a total return unitrust to an income trust and reinstate the power to adjust described in Section 22-3-104; or

(c) change the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust if the trustee adopts a written policy for the trust providing that:

(i) in the case of a trust administered as an income trust, future distributions from the trust will be unitrust amounts rather than net income;

(ii) in the case of a trust administered as a total return unitrust, future distributions from the trust will be net income rather than unitrust amounts; or

(iii) the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust will be changed as stated in the policy.

(2) The trustee shall mail notice of the proposed action to the settlor of the trust, if the settlor is living, and to all adult qualified beneficiaries, as defined in Section 75-7-103, who, on the date of the unitrust conversion, are current distributees or permissible distributees of trust income or principal, or would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date, assuming nonexercise of all powers of appointment.

(3) Notice of proposed action need not be given to any person who consents in writing to the proposed action. The consent may be executed at any time before or after the proposed action is taken.

(4) The trustee's written notice of the trustee's intention to take the proposed action shall include:

(a) the name and mailing address of the trustee;

(b) the name and telephone number of a person who may be contacted for additional information;

(c) a description of the action proposed to be taken and an explanation of the reasons for the action;

(d) a copy of the trustee's written policy described in Subsection (1)(c);

(e) the time within which objections to the proposed action can be made, which shall be at least 30 days from the mailing of the notice of proposed action; and

(f) the date on or after which the proposed action may be taken or is effective.

(5) A beneficiary may object to the proposed action by mailing a written objection to the trustee stating the objection and the basis or reason for the objection at the address stated in the notice of proposed action within the time period specified in the notice of proposed action.

(6) If the trustee receives a written objection stating the basis or reason for the objection within the applicable time period, and within 60 days the objecting beneficiary does not subsequently consent in writing, either the trustee or a beneficiary may petition the court to have the proposed action taken as proposed, taken with modifications, or denied.

(7) A beneficiary who does not object is not estopped from opposing the proposed action in the proceeding.

(8) If the trustee decides not to implement the proposed action, the trustee shall notify the beneficiaries of the decision not to take the proposed action and the reasons for the decision. The trustee's decision not to implement the proposed action may not give rise to liability to any current or future beneficiary.

Enacted by Chapter 244, 2013 General Session

22-7-104. Trustee powers to convert trusts where there is no trustee other than an interested trustee -- Requirements to make unitrust election.

If there is no trustee of the trust other than an interested trustee, the interested trustee, or when two or more persons are acting as trustees and are interested trustees, a majority of the interested trustees, in the trustee's sole discretion and without the approval of the district court, may:

(1) elect to release the power to adjust described in Section 22-3-104 and to convert an income trust to a total return unitrust;

(2) reconvert a total return unitrust to an income trust and reinstate the power to adjust described in Section 22-3-104; or

(3) change the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust if the requirements of Subsections 22-7-103(4)(a) through (f) are completed and the trustee appoints a disinterested person who, in the person's sole discretion but acting in a fiduciary capacity, determines for the trustee:

(a) the percentage to be used to calculate the unitrust amount;

(b) the method to be used in determining the fair market value of the trust; and

(c) which assets, if any, are to be excluded in determining the unitrust amount.

Enacted by Chapter 244, 2013 General Session

22-7-105. Unitrust election by beneficiary -- Ability to request trustee

action.

- (1) A trust beneficiary may:
 - (a) submit to the trustee a written request to convert an income trust to a total return unitrust;
 - (b) reconvert a total return unitrust to an income trust; or
 - (c) change the percentage used to calculate the unitrust amount pursuant to Section 22-7-108.
- (2) If the trustee declines or fails to act within six months of receipt of the written request, the beneficiary may petition the district court having jurisdiction to order the conversion, reconversion, or change in the unitrust rate, if the action would not alter any amount in the trust that is permanently set aside for charitable purposes unless both income and principal are set aside.
- (3) If the court finds that the conversion, reconversion, or change in the unitrust rate under this section will enable the trustee to better carry out the intent of the settlor, testator, or testatrix and the purposes of the trust, the court shall approve the conversion, reconversion, or change in the unitrust rate.

Enacted by Chapter 244, 2013 General Session

22-7-106. Settlor created unitrust.

A settlor may create a trust instrument with terms providing that the trust shall be administered as a total return unitrust under this chapter. A settlor may also create a trust instrument with terms providing that the trust may be administered as either an income trust or as a total return unitrust under this chapter in the discretion of the trustee or a trust protector appointed in the trust instrument.

Enacted by Chapter 244, 2013 General Session

22-7-107. Valuations.

- (1) The fair market value of a trust subject to this chapter shall be determined, at least annually, using a valuation date or dates, or averages of valuation dates, that are considered appropriate except that:
 - (a) the trustee may not include in the fair market value the value of any residential property or any tangible personal property that the income beneficiary has the right to occupy or use;
 - (b) the trustee may not limit or restrict any right of the beneficiary to use the excluded property in accordance with the governing instrument; and
 - (c) where the terms of the trust do not provide contrary direction, the trustee shall include in the fair market value the value of:
 - (i) the portion of any private or commercial annuity from which the trustee is receiving distributions as a designated beneficiary; and
 - (ii) the portion of any individual retirement account and pension, profit-sharing, stock bonus, or stock ownership plan retirement account from which the trustee is receiving distributions as a designated beneficiary.
- (2) Assets for which a fair market value cannot be readily ascertained shall be valued using valuation methods that are considered reasonable and appropriate, as

determined in the sole discretion of the trustee. The assets may be excluded from valuation, in the sole discretion of the trustee, provided all income received with respect to the assets is distributed to the extent distributable in accordance with the terms of the governing instrument.

Enacted by Chapter 244, 2013 General Session

22-7-108. Unitrust percentages.

The percentage to be used in determining the unitrust amount shall be a reasonable current return from the trust, which may not be less than 3% nor more than 5%, taking into account:

- (1) the intentions of the settlor of the trust as expressed in the governing instrument;
- (2) the needs of the beneficiaries;
- (3) general economic conditions;
- (4) projected current earnings and appreciation for the trust; and
- (5) projected inflation and its impact on the trust.

Enacted by Chapter 244, 2013 General Session

22-7-109. Treatment and allocation of income.

Following the conversion of an income trust to a total return unitrust or upon creation of a total return unitrust by a settlor, the trustee:

- (1) shall treat the unitrust amount as if it were net income of the trust for purposes of determining the amount available, from time to time, for distribution from the trust; and
- (2) may allocate to trust income for each taxable year of the trust, or portion of a taxable year:
 - (a) net short-term capital gain described in Section 1222(5), Internal Revenue Code, for the year, or portion of the year, but only to the extent that the amount allocated, together with all other amounts allocated to trust income for the year, or portion of the year, does not exceed the unitrust amount for the year, or portion of the year; and
 - (b) net long-term capital gain described in Section 1222(7), Internal Revenue Code, for the year, or portion of the year, but only to the extent that the amount allocated, together with all other amounts, including amounts described in Subsection (1), allocated to trust income for the year, or portion of the year, does not exceed the unitrust amount for the year, or portion of the year.

Enacted by Chapter 244, 2013 General Session

22-7-110. Administration.

In administering a total return unitrust, the trustee may, in the trustee's sole discretion, but subject to the provisions of the governing instrument, determine:

- (1) the effective date of the conversion;
- (2) the timing of distributions, including provisions for prorating a distribution for

a short year in which a beneficiary's right to payments commences or ceases;
(3) whether distributions are to be made in cash, in kind, partly in cash, or partly in kind;
(4) if the trust is reconverted to an income trust, the effective date of the reconversion; and
(5) other administrative issues necessary or appropriate to carry out the purposes of this chapter.

Enacted by Chapter 244, 2013 General Session

22-7-111. Treatment of underpayments or overpayments.

In the event of an underpayment to a beneficiary, the trustee shall pay to a beneficiary within a reasonable time, and in the event of an overpayment to a beneficiary, the trustee shall recover from the beneficiary either by repayment by the beneficiary or by withholding from future distributions to the beneficiary, an amount equal to the difference between the amount properly payable and the amount actually paid.

Enacted by Chapter 244, 2013 General Session

22-7-112. Effect of conversion or reconversion on governing instrument.

Conversion to a total return unitrust under the provisions of this chapter may not affect any other provision of the governing instrument, if any, regarding distributions of principal. If a total return unitrust is reconverted to an income trust, the trustee's release of the trustee's power under Section 22-7-104, if it was given at the time the trust was converted to a total return unitrust, is void when the trust is reconverted.

Enacted by Chapter 244, 2013 General Session

22-7-113. Situs.

This chapter shall be construed as pertaining to the administration of a trust and shall be available to any trust that is administered in Utah under Utah law unless:

- (1) the governing instrument reflects an intention that the beneficiary or beneficiaries are to receive an amount other than a reasonable current return from the trust;
- (2) the trust is a trust described in Section 170(f)(2)(B), 664(d), 2702(a)(3), or 2702(b), Internal Revenue Code; or
- (3) the governing instrument expressly prohibits use of this chapter by specific reference to this chapter.

Enacted by Chapter 244, 2013 General Session

22-7-114. Trustee's liability.

Any trustee or disinterested person who in good faith takes or fails to take any action under this chapter may not be liable to any beneficiary or other person affected by the action or inaction, regardless of whether the beneficiary or person received

written notice as provided in this chapter and regardless of whether the beneficiary or person was under a legal disability at the time of the delivery of the notice. The beneficiary's or any other person's exclusive remedy shall be to obtain an order of the district court directing the trustee to convert an income trust to a total return unitrust, to reconvert from a total return unitrust to an income trust, or to change the percentage used to calculate the unitrust amount.

Enacted by Chapter 244, 2013 General Session

22-7-115. Judicial control of discretionary powers.

(1) A court may not change a trustee's decision to exercise or not to exercise a discretionary power conferred by this chapter unless the court determines that the decision was an abuse of the trustee's discretion. A court may not determine that a trustee abused the trustee's discretion merely because the court would have exercised the discretion in a different manner or would not have exercised the discretion.

(2) Where a beneficiary elects to challenge an action or nonaction by a trustee or a disinterested party under the powers and authority granted to the party under this chapter, the beneficiary has the burden of establishing, by a preponderance of the evidence, that the actions or nonactions by a trustee or a disinterested party abused the trustee's or the party's discretion. A beneficiary who fails to state a basis or reason for an objection or fails to prove by a preponderance of the evidence the proposed action should be taken or should not be taken shall be liable to the trust or all other beneficiaries for damages and costs associated with the objection.

Enacted by Chapter 244, 2013 General Session

22-7-116. Limitation of election.

An action may not be taken under Section 22-7-103, 22-7-104, or 22-7-105 more frequently than every two years, unless the district court orders otherwise.

Enacted by Chapter 244, 2013 General Session

22-7-117. Application.

This chapter applies to every trust or decedent's estate existing on July 1, 2013, or created afterward, except as otherwise expressly provided in the will or terms of the trust or in this chapter.

Enacted by Chapter 244, 2013 General Session

22-7-118. Trusts for which a marital deduction under the tax code has been taken -- Trusts for which the generation-skipping transfer tax does not apply.

(1) This section applies to the following trusts:

(a) a trust for which a marital deduction has been taken for federal tax purposes during the lifetime of the spouse for whom the trust was created under Section 2056 or 2523 of the Internal Revenue Code; and

(b) a trust to which the generation-skipping transfer tax due under Section 2601 of the Internal Revenue Code does not apply by reason of any effective date or transition rule.

(2) To the extent necessary to satisfy a tax law requirement or to preserve a tax benefit, the unitrust amount may not be less than the net income of the trust. Net income of the trust shall be determined as if the trust were not a unitrust.

Enacted by Chapter 244, 2013 General Session